IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 692 OF 2006

Suresh Hiralal Parekh,
since deceased through heirs. .. ... Appellants.
VS.

Dr. Subhash Purshottam Bhasale
since deceased through his heirs. . ... Respondents

Mr. V. S. Gokhale for appellants.
Mr. Vijay Killedar for respondent no.5.

CORAM: D. G. KARNIK **J.**

DATE: 4th October 2006

P.C.:

1. Heard learned counsel for the parties.
2. This appeal is directed against the order dated 8th September 2006 passed by the Joint Civil Judge, Senior Division, Pune, in Special Civil Suit No. 1655 of 1997 rejecting the appellants' application (exhibit 97) for injunction for restraining the respondents from demolishing the suit property.
3. The present respondents are the heirs of respondent who was defendant no.1 in the suit and the owner of the suit property. Defendant no.1. was in financial difficulties and on 11th July 1989 he borrowed a sum of Rs.26,000/- . The

present appellants are the heirs of the original plaintiff. An agreement regarding the said loan was executed between the plaintiff and the defendant no.1, under which the defendant no.1 agreed to repay the said loan to the plaintiff and further agreed that till the loan was repaid he would not sell the suit property to any third person without prior intimation to the plaintiff. However, without intimation to the plaintiff the defendant no.1 sold the suit property to the respondent no.5 The plaintiff filed a suit alleging that the agreement dated 21st July 1989 was an agreement of sale and claimed specific performance thereof. In the said suit he made an application for interim injunction restraining the respondent no.5 from demolishing the suit property. That application was rejected, by the impugned order.

4. It may incidentaly be noted that the plaintiff was a tenant in respect of a portion of the suit property. The learned judge has rejected the application on the ground that as a tenant, his remedy lay elsewhere. Learned counsel for the appellant submits that this approach and reasoning is totally erroneous as the suit is not filed in the capacity as a tenant but as a prospective purchaser for specific performance of the agreement of sale. No doubt there is substance in this contention. I would therefore examine independently whether the appellant has made out a strong prima facie case for grant of an injunction.

5. The agreement dated 21st July 1989 between the plaintiff and the defendant is in vernacular language and its translation has been filed by the respondent along with the affidavit. The correctness of the translation is not disputed by the counsel for the appellant. Since the agreement is very short the same is quoted verbatim.

"Receipt dated Friday the 21st day of July 1989.

BETWEEN

Shri Suresh Hiralal Parekh
age 45, Occ: Business
Res. 62, Mahatma Gandhi
Road, Pune -1. .... EXICUTOR

And

Shri Subhash Purshottam Bhasale
Age 50, Occ: Medical Practitioner
Res. 62, Mahatma Gandhi
Road, Pune-1. ...EXICUTANT

I give a receipt in writing as follows:

Due to certain Financial difficulties, I had asked you for hand loan of Rs.26,000/- (Rupees Twenty Six Thousand) and while accepting my request, today you have given me Rs.26,000/- (Rupees Twenty Six Thousand) vide cheque No. 1063427 dated 21st July 1989 drawn on the Jammu and Kashmir Bank Ltd., which I have received. There is no dispute regarding deposit. I shall repay the said amount to you within 10 (ten)

months from today. However, till I repay the entire amount, I shall not sell the property owned and possessed by me, situated at 62, Mahatma Gandhi Road, Pune -01 to anyone else and if before the entire amount is repaid, I have to sell the said property, I shall in advance let you know in writing and I shall discuss with you in respect of the same".

I have willingly and knowingly given the aforesaid Receipt in writing and the same will be binding on my heirs.

Pune:

Date: sd/-

Witnesses : sd/-

1)

2) Exicutant."

6. Bare reading of the agreement / receipt would show that it is not an agreement of sale. It is clearly an agreement of loan. The defendant no.1 had taken a loan and had promised to repay the said loan. He had not agreed to sell it nor had he created any security on the suit property for repayment of loan but had stated that if he desired to sell the property he would give prior intimation to the plaintiff. This was probably in order to enable the plaintiff to negotiate for purchase of the property or to take steps for recovery of loan. In the circumstances the plaintiff / appellant has not made any strong prima facie case for claiming specific performance

and is not entitled to for any injunction.

7. For these reasons the appeal is dismissed summarily.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
Civil application No. 934 of 2006
in
A. O. NO. 692 OF 2006

Suresh Hiralal Parekh,
since deceased through heirs. .. ... Appellants.
VS.

Dr. Subhash Purshottam Bhasale
since deceased through his heirs. . ... Respondents

Mr. V. S. Gokhale for appellants.
Mr. Vijay Killedar for respondent no.5.

CORAM: D. G. KARNIK **J.**

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In view of the dismissal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)